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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE CITY AND COUNTY OF SAN
FRANCISCO, CALIFORNIA and THE PEOPLE
OF THE STATE OF CALIFORNIA, Acting by
and through San Francisco City Attorney DENNIS
J. HERRERA,

Plaintiffs,

v.

PURDUE PHARMA L.P., et al.

Defendants.

Case No. 3:18-cv-07591-CRB-JSC

JOINT STATUS UPDATE

Judge: Hon. Charles R. Breyer and
Jacqueline Scott Corley

Courtroom: Via Videoconference

Hearing Date: October 2, 2020

Hearing Time: 9:30 a.m.

The parties respectfully submit this Joint Status Update in advance of the Court's discovery conference scheduled for October 2, 2020 at 9:30 a.m.

I. JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION

At the Court's direction (Dkt. 273 at 2-3), the parties have met and conferred regarding a revised proposed schedule and agree on the following proposed deadlines:

	Parties' Proposal
Plaintiffs submit final list of custodians and non-custodial databases	October 16, 2020
Parties agree to or submit dispute regarding Plaintiffs' proposed custodians and databases	October 30, 2020
Parties submit proposed deposition protocol or dispute re same	November 20, 2020
Substantial completion of production of documents for all parties ¹	February 26, 2021
Close of Fact Discovery	May 28, 2021
Close of Expert Discovery	July 30, 2021

The parties have also agreed to a proposed dispute resolution procedure, which largely tracks the protocol recently entered in *In Re: Facebook, Inc. Consumer Privacy User Profile Litig.*, No. 3:18-md-02843-VC-JSC, Dkt. 393 (N.D. Cal. April 1, 2020). The parties' proposal is reflected below, with agreed modifications to the *Facebook* protocol underlined and struck through:

The parties shall meet and confer by video, with the videoconference call to be arranged and scheduled by the moving party. Counsel with authority to negotiate and make commitments on behalf of the parties involved in a dispute (subject to the need to obtain client approval for new or amended proposals) shall participate in the meet-and-confer process. Such counsel need not be designated lead counsel for any party. If the parties remain at impasse after meeting and conferring in good faith, the moving party may, no earlier than three business days after the parties have

¹ Plaintiffs reserve the right to revisit this deadline as to Plaintiffs' productions if the end result of the parties' negotiations and/or Court intervention on the custodian and database discussion substantially exceeds Plaintiffs' proposals. Plaintiffs intend to produce all documents on a rolling basis and will endeavor to prioritize non-custodial documents from departments for whom custodial documents have been produced.

concluded the meet and confer process, file a ~~two~~-three-page statement as contemplated by this Court's Standing Order. See CIVIL STANDING ORDER OF MAGISTRATE JUDGE, JACQUELINE SCOTT CORLEY, Revised August 12, 2020, ~~March 7, 2019~~, at 4-5. The opposing party shall then have three business days file its written response of no more than ~~two~~ three pages.

The parties are prepared to submit a stipulation and proposed order reflecting this proposal should the Court so instruct.

Finally, while the parties were in the process of finalizing this statement, Judge Breyer entered his order on Defendants' motions to dismiss. Dkt. 285. The parties are in the process of reviewing the ruling and analyzing its implications for discovery.²

II. PLAINTIFFS' STATEMENT

The parties have continued to work diligently since the last status conference. This statement outlines the status of issues the parties have resolved and those that will require the Court's input.

A. Issues addressed since the last discovery conference

1. Stipulated Protective Order

The parties submitted a stipulation and proposed order regarding the applicability of (and minor modifications to) the governing protective orders issued in the MDL (Dkt. 278), which the court entered on September 10, 2020 (Dkt. 279). As indicated in the stipulation, both sides reserved the right to seek further modifications and/or additions to those orders.

2. Document Review and Production

On September 23, 2020, Plaintiffs produced 7,453 responsive documents from emails collected from five custodians: from the Department of Public Health, Dr. Keith Seidel, Medical Director, Southeast Health Center, and Michelle Geier, Pharm. D., Psychiatric Clinical Pharmacist Supervisor; from the Police Department, Captain Timothy Falvey, Field Operations Bureau; from the Fire Department, Assistant Deputy Chief Sandra Tong, Emergency Medical Services; and from the Library, City Librarian Michael Lambert.

² Defendants will be prepared to address these issues, to the extent necessary, at the next discovery conference.

1 This week, Plaintiffs will produce an additional 21,644 responsive documents from
 2 emails collected from six more custodians: from the Department of Public Health, Dr. Naveena
 3 Bobba, Deputy Director of Health, and Dr. Joseph Pace, Medical Director, Tom Waddell Urban
 4 Health Clinic; from the Department of Homelessness and Supportive Housing, Umecke
 5 Cannarito, Director of Outreach and Temporary Shelter; from the Office of the Medical
 6 Examiner, Dr. Luke Rodda, Chief Forensic Toxicologist and Forensic Laboratory Director;
 7 from the Police Department, Commander Dan Parea, Special Operations Bureau; and from the
 8 Fire Department, Captain Simon Pang, EMS-6.

9 Plaintiffs have identified an additional 13 custodians—for a total of 24—from whom
 10 collection and review is ongoing. Their files will be produced expeditiously on a rolling basis.

11 Defendants' representation that the parties may be at odds regarding the number and
 12 composition of Plaintiffs' custodians and non-custodial databases is premature. As reflected in
 13 the parties' joint proposed case management schedule, Plaintiffs will provide Defendants a
 14 complete list of proposed custodians and non-custodial databases by October 16, after which the
 15 parties will have until October 30 to address any disagreements that may arise from those lists.
 16 Plaintiffs also take issue with Defendants' representation of communications between the
 17 parties regarding custodians. After Plaintiffs identified their initial set of custodians,
 18 Defendants proposed a list of several hundred potential custodians on July 31, 2020. Plaintiffs
 19 responded promptly, asking Defendants to provide additional information regarding the basis
 20 for naming each. In the two months since, Defendants have not responded to this request.

21 To date, only two Defendants have produced documents in response to Plaintiffs'
 22 document requests. Endo's September 23 production comprised three documents.³
 23 McKesson's September 23 production comprised five documents. Certain Defendants have
 24 also deemed produced in this action documents produced in other related cases.

25 **3. PFS Amendment**

26 On September 22, 2020, Plaintiffs served the Second Amended Government Plaintiffs

27 ³ After the parties met and conferred about this statement, Endo made an additional production
 28 and AmerisourceBergen made a production of what appears to be eleven documents. Plaintiffs
 have not yet had the opportunity to analyze these recent productions.

Fact Sheet. Plaintiffs have also offered to schedule a meet and confer with a representative from the City Attorney's Office to address the issues outlined in Discovery Order No. 1 once Defendants had an opportunity to review.

4. Discovery Served and Answered

On September 18, 2020, Plaintiffs served supplemental responses and objections to the initial three sets of interrogatories served by the Manufacturer, Distributor, and Walgreens Defendants. The Distributor Defendants served an additional 14 interrogatories on September 11, 2020. Plaintiffs have been and remain open to conferring about their interrogatory responses and objections with Defendants—including about the specific issues that Defendants preview in their statement. Defendants have not requested any such meet and confer. The parties do, however, continue to meet and confer over a number of outstanding requests for production propounded by both Plaintiffs and Defendants. The parties have also scheduled a meet and confer to discuss Defendants' proposal for "early disclosure of Plaintiffs' expert reports." While Plaintiffs disagree with Defendants' characterizations of that issue in this statement, Plaintiffs will refrain from any substantive discussion until the parties have had an opportunity to confer further.

To date, Defendants have also served 17 subpoenas to non-parties, comprising 327 requests for production of documents. Three of those extremely broad subpoenas were directed at organizations that serve the City's most vulnerable young children—First 5 of San Francisco (which is not a third party, but rather part of the City) and Wu Yee Children Services and Children's Council of San Francisco (small non-profits that contract with the City)—notwithstanding the fact that, in an effort to streamline their case, Plaintiffs disavowed abatement and damages related to "[i]ncreased costs related to foster care, child support, family and children's services and Family Treatment Court."⁴ Dkt. 135 at 3-4. Plaintiffs requested that those subpoenas be withdrawn, and meet-and-confer correspondence on that issue is ongoing.⁵

⁴ Individuals who appear in Family Treatment Court may avail themselves of non-court services paid for by the City, such as transitional housing or substance abuse treatment. Plaintiffs do not disavow abatement for such costs.

⁵ Defendants stated that they would "consider withdrawing these subpoenas if Plaintiffs confirm in writing that they will not seek damages, abatement, or any other form of relief in any way related to child and family services in the City and County of San Francisco for this action." Plaintiffs have provided that written confirmation and are awaiting Defendants' response.

1 Separately, on September 23, 2020, non-party California Board of Pharmacy, represented
 2 by the California Attorney General, moved to quash the subpoenas served on them by Walgreens.
 3 Dkt. 282. The California Board of Pharmacy notes that the “document subpoena seeks 18 broad
 4 categories of documents, essentially demanding the production of all documents and
 5 communications relating to opioids since the formation of the Board in 1891.” *Id.* at 2. Likewise,
 6 “the deposition subpoena” would “requir[e] a representative to testify on every opioid-related
 7 document created or collected by the Board since it came into existence.” *Id.* at 3. Walgreens’
 8 response is due on October 7, 2020.

9 **B. Forthcoming issues likely to require Court resolution**

10 There are a number of percolating disputes that Plaintiffs anticipate may require judicial
 11 assistance to resolve via the dispute resolution procedure. Those issues include:

12 • **Defendants’ requests for individual prescription- and claims-level data.**

13 Plaintiffs have elected to prove their claims on an aggregate basis and do not
 14 intend to introduce or rely upon individual prescription- or claims-level data.

15 Defendants have nevertheless sought such data through multiple discovery
 16 requests. Plaintiffs maintain, as another bellwether court recently held, that such
 17 requests are extremely burdensome, irrelevant to the actual claims at issue, and at
 18 best, disproportional.

19 • **Geographic limitations on Defendants’ productions.** A number of Plaintiffs’
 20 requests for production seek documents pertaining to the State of California, and
 21 not simply the City and County of San Francisco, because pills commonly travel
 22 across jurisdictions. A number of Defendants are refusing to produce documents
 23 pertaining to any jurisdiction outside of San Francisco city limits, thus denying
 24 Plaintiffs the opportunity to prove the “migration” theories alleged in the
 25 complaint and documented for other jurisdictions in other case tracks.

26 • **Temporal limitations on Defendants’ productions.** Defendants have relied
 27 heavily on previous productions made in other case tracks, and several have
 28 resisted Plaintiffs efforts to seek supplementation in the time frame following

those productions.

C. Proposed agenda for status conference

Plaintiffs submit that the status conference should address the issues outlined herein, including the parties' proposed schedule and dispute resolution procedure.

III. DEFENDANTS' STATEMENT

Since the last conference, when the Court directed the parties to regularly meet and confer, the parties have made some progress, though significant work still remains. As of the date of this filing, the parties have agreed that the ESI Order and Protective Orders issued in the MDL Litigation shall apply to this case, as reflected in the parties' Joint Stipulation and Proposed Order Regarding Protective Order and ESI Order, which the Court ordered on September 10, 2020. (Dkt. No. 279.) The parties have also agreed upon the search terms Plaintiffs will use to identify documents responsive to Defendants' discovery requests. The parties further agreed to the discovery schedule and dispute resolution protocol set forth above. On September 18, 2020, Plaintiffs provided supplemental responses to the first sets of interrogatories propounded by the Distributor Defendants, Manufacturer Defendants, and Walgreens and on September 22, 2020, they served a Second Amended Plaintiffs' Fact Sheet ("PFS"). Defendants are still reviewing the supplemental responses and the amended PFS and will meet and confer with Plaintiffs, as necessary, in due course.

Disputes still remain regarding (1) various document requests Defendants served on Plaintiffs and the completeness of Plaintiffs' interrogatory responses (discussed further below); and (2) Plaintiffs' custodians.

A. Status of the Parties' Discussions

Plaintiffs' Document Productions: On August 31, 2020, Plaintiffs made their first production of documents, consisting of approximately 85,000 pages of public budgets, reports, and related documents. At the last status conference, Plaintiffs represented that they had collected files from 24 custodians and that they were in the process of actively reviewing 600,000 documents, which they expected to begin producing on a rolling basis. (9/3/20 Hrg Tr. 5:24-6:3; 7:11-18.) Defendants received Plaintiffs' second production on September 23, 2020. Plaintiffs

1 produced approximately 31,600 pages of documents and Defendants are still in the process of
2 reviewing.

3 **Plaintiffs' Custodians:** Discussions regarding Plaintiffs' custodians have been ongoing
4 for the past three months. To date, Plaintiffs have identified 24 custodians from nine departments:
5 (1) San Francisco Department of Public Health; (2) San Francisco Police Department; (3) San
6 Francisco Fire Department; (4) San Francisco Office of the Chief Medical Examiner; (5) San
7 Francisco Department of Homelessness and Supportive Housing; (6) San Francisco Library; (7)
8 San Francisco Adult Probation Department; (8) San Francisco Public Works; and (9) San
9 Francisco Recreation and Parks Department. On July 31, 2020 and August 18, 2020, Defendants
10 identified a number of concerns with Plaintiffs' proposed custodians. First, Plaintiffs' custodian
11 list is insufficient because it omits custodians from departments with relevant information,
12 including two departments for which Plaintiffs seek damages and/or abatement. Plaintiffs' list
13 does not include custodians from the Sheriff's Department or the Municipal Transportation
14 Agency, which Plaintiffs previously identified in their June 30, 2020 letter as departments with
15 relevant information and in their August 27, 2020 letter as being among the departments for
16 which they seek damages or abatement. On July 31, 2020, Defendants provided a list of
17 departments and agencies they believe have relevant information, including the roles of
18 individuals within each department and agency that Defendants expect to be relevant. Plaintiffs
19 have refused to provide any explanation as to why custodians from the departments Defendants
20 identified should not be subject to discovery. Additionally, Defendants do not believe Plaintiffs'
21 suggested custodians cover the relevant time period. After many months of investigation,
22 Plaintiffs still have not proposed a complete list of custodians from whom they will agree to
23 produce documents. In Plaintiffs' most recent letter from August 26, 2020, Plaintiffs reiterated
24 their investigation remains ongoing. Consistent with the proposed schedule above, Defendants
25 ask that the Court order Plaintiffs to provide a complete list of proposed custodians no later than
26 October 16, 2020.

27 **Plaintiffs' Non-Custodial Sources:** Although Plaintiffs have identified a few non-
28 custodial databases from which they will produce information, they have represented that their

1 investigation regarding non-custodial document repositories and databases is ongoing.

2 Defendants require a complete list of non-custodial document repositories and databases in order
3 to assess whether there are additional potential sources that Plaintiffs should search.

4 **Plaintiffs' Responses to Interrogatories:** On September 18, 2020, Plaintiffs served their
5 Supplemental Responses and Objections to Manufacturer Defendants' First Set of Interrogatories
6 and Distributor Defendants' First Set of Interrogatories, and Walgreens' First Set of
7 Interrogatories. Defendants are continuing to review these responses but have already identified a
8 number of deficiencies that will require further discussion. For example, Plaintiffs provided no
9 substantive information in response to any of the Manufacturer Defendants' 13 Interrogatories,
10 either standing on their objections or deferring to expert discovery or the Complaint/the PFS.
11 Meanwhile, Distributor Defendants' First Set of Interrogatories sought a comprehensive list of
12 persons with knowledge (i.e., witnesses and potential custodians), but Plaintiffs only identified
13 the same incomplete list of 24 persons they proposed as initial custodians, making it difficult for
14 Defendants to identify the universe of potential or appropriate custodians.

15 **Early Disclosure of Plaintiffs' Expert Reports:** During the September 3, 2020 status
16 hearing, the Court suggested that Plaintiffs may need to disclose certain expert reports early to
17 allow for fact discovery following the disclosures. (9/3/20 Hrg Tr. 37:8-17; 40:14-41:6.)
18 Consistent with that suggestion, Defendants proposed early expert disclosures in four categories
19 as to which Plaintiffs have suggested that responses to Defendants' discovery requests can only
20 be provided by experts, yet (whether this assertion is correct or not – and Defendants believe it is
21 not) fact discovery will be necessary to probe Plaintiffs' responses. The parties plan to confer
22 regarding this proposal and submit any disputes to the Court at a later date.

23 **Defendants' Document Productions:** Plaintiffs are already in possession of tens of
24 millions of pages of documents that Defendants previously produced in the MDL and other
25 opioid litigation. The parties continue to meet and confer regarding the additional document
26 requests Plaintiffs have propounded. Ongoing discussions relate to particular document requests,
27 the relevant geographic scope, and the relevant temporal scope. The parties will continue to
28

1 discuss these issues but may eventually need the Court's assistance should the parties be unable to
2 reach agreement.

3 **Defendants' Custodians:** Certain Defendants have started discussing with Plaintiffs
4 potential custodians for Defendants' supplemental production of documents in this case, in
5 addition to the voluminous productions Defendants made in Track One of the MDL. The parties
6 will continue to engage in discussions about custodians.

7 **Discovery Disputes Identified by Plaintiffs:** Plaintiffs raised a number of issues that it
8 intends to present to the Court in the future regarding Defendants' requests for individual
9 prescription- and claims-level data, geographic limitations on Defendants' productions, and
10 temporal limitations on Defendants' productions. These issues are not ripe for the Court to
11 consider, and such disputes should be properly addressed through the dispute resolution process.
12 Plaintiffs likewise agreed these issues are not ripe for consideration.

13 **B. Dispute Resolution Protocol**

14 As discussed above, the parties have agreed to a proposed dispute resolution protocol for
15 use in this action, which is based on the protocol this Court entered in the *Facebook* litigation,
16 with certain modifications, including to the page limits of any dispute statement filed with the
17 Court. Defendants do not anticipate needing more than three pages for most discovery disputes,
18 but in certain circumstances individual Defendants, or Defendant groups, may need to address
19 disputes separately, and may require additional pages to do so. Defendants will work with
20 Plaintiffs to avoid disputes in such situations, in hopes that the parties may present any requests
21 for additional pages jointly, or without opposition.

22 **C. Schedule for Completion of Discovery**

23 Although the parties have been actively engaging in meet and confers to address the
24 Requests for Production that were served in April, Plaintiffs have made minimal progress thus far
25 on their productions. The Court observed that timing is "going to be in Plaintiffs' control. The
26 faster they produce things and complete it, then the faster we can get to trial." (*Id.* at 11:21-24.)
27 As Defendants have previously informed the Court, Plaintiffs began the case with a discovery
28 advantage, having already received tens of millions of pages of documents from the Defendants

1 through the MDL productions. While Defendants recognize the need to provide additional
2 discovery specific to San Francisco in this case, the onus of pushing discovery forward falls on
3 Plaintiffs. Defendants have been actively engaging Plaintiffs over the last few months to
4 encourage the progression of discovery but have been hindered in that effort due to Plaintiffs'
5 inability even to provide a full list of custodians and refusal to provide complete responses to the
6 Defendants' interrogatories, including in their supplemental responses served on September 18,
7 2020.

8 On September 22, 2020, the parties had a videoconference to discuss a feasible schedule.
9 Defendants informed the Plaintiffs that it is premature to set deadlines for the close of fact or
10 expert discovery, in light of how little progress Plaintiffs have made even on identifying
11 custodians and relevant non-custodial repositories. Plaintiffs, however, insisted on also including
12 proposed dates for the close of fact and expert discovery. The parties were ultimately able to
13 agree to the proposed schedule set out in the chart above. Defendants, however, have agreed to
14 the last two dates only reluctantly, as they remain skeptical that Plaintiffs will be able to meet the
15 proposed fact discovery deadline given their limited progress so far.

16 **D. Third-party Discovery**

17 Walgreens has served subpoenas for documents and testimony on the California Board of
18 Pharmacy, seeking, *inter alia*, information on the Board's investigations and disciplinary actions
19 involving pharmacists and relating to prescription opioids—information that is centrally relevant
20 to Plaintiffs' claims against not just Walgreens but all Defendants. On September 23, 2020, the
21 California Board of Pharmacy filed a motion to quash the subpoenas. *See* Dkt. 282. Defendants'
22 response is due October 7, 2020.

23 Plaintiffs suggest that Defendants' requests for documents related to child and family
24 services, including subpoenas served on non-parties, are improper because Plaintiffs have
25 disavowed abatement and damages related to child and family services. The parties continue to
26 meet and confer on issues relating to the subpoenas, including the scope of Plaintiffs' claimed
27 remedies in this case. In other opioid litigation, including in Track One of the MDL and in other
28 remand cases, the plaintiffs' claimed remedies have included substantial components and large

amounts related to children and families, and the parties have conducted extensive discovery on such issues.

E. Proposed Agenda

During the conference, Defendants would like to discuss the parties' suggested schedules for completion of discovery and the dispute resolution protocol.

DATED: October 1, 2020

Respectfully submitted,

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ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: October 1, 2020

By: /s/ Elizabeth J. Cabraser

CERTIFICATE OF SERVICE

I hereby certify that, on October 1, 2020, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser
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